

**TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION**

**Effective September 22, 1994**

**ARTICLE 11. PREQUALIFICATION OF CONTRACTORS AND BIDDING**

**Rule 1. Definitions**

**105 IAC 11-1-1 Applicability**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 1. The definitions in this rule apply throughout this article.  
(Indiana Department of Transportation; 105 IAC 11 -1-1)

**105 IAC 11-1-2 "Advertisement" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 2. "Advertisement" means the public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.  
(Indiana Department of Transportation; 105 IAC 11 -1-2)

**105 IAC 11-1-3 "Applicant" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 3. "Applicant" means the contractor or the subcontractor who has filed an application with the department. (Indiana Department of Transportation; 105 IAC 11 -1-3)

**105 IAC 11-1-4 "Application" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 4. "Application" means the statement filed with the department.  
(Indiana Department of Transportation; 105 IAC 11 -1-4)

**105 IAC 11-1-5 "Award" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 5. "Award" means the acceptance by the department of a bid and authorization by the commissioner to enter into a contract. (Indiana Department of Transportation; 105 IAC 11 -1-5)

**105 IAC 11-1-6 "Bid bond" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 6. "Bid bond" means the approved form of security furnished with a bid to guarantee that the bidder will enter into the contract if its bid is accepted. (Indiana Department of Transportation; 105 IAC 11 -1-6)

**105 IAC 11-1-7 "Bidder" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 7. "Bidder" means an individual, partnership, firm, corporation, or combination of same submitting a bid for the advertised work. (Indiana Department of Transportation; 105 IAC 11 -1-7)

**105 IAC 11-1-8 "Certificate of qualification" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 8. "Certificate of qualification" means the official document issued by the department which authorizes a contractor to bid on department contracts. (Indiana Department of Transportation; 105 IAC 11 -1-8)

**105 IAC 11-1-9 "Commissioner" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 9. "Commissioner" means the chief executive and chief administrative officer of the department who is responsible for administering the department. As used in this article, the designation "commissioner" means the commissioner, the commissioner's designee, or alternate. (Indiana Department of Transportation; 105 IAC 11 -1-9)

**105 IAC 11-1-10 "Contract" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 10. (a) "Contract" means the written agreement between the department and the contractor setting forth the obligations of the parties thereto including, but not limited to the following:

- (1) Performance of the work.
- (2) Furnishing labor and materials.
- (3) The basis of payment.

(b) The contract may include, but is not limited to the following:

- (1) Proposal.
- (2) Itemized proposal.
- (3) Contract form.
- (4) Bid bond.
- (5) Performance bond.
- (6) Specifications.
- (7) Supplemental specifications.
- (8) Special provisions.
- (9) Additional special provisions.
- (10) Information to bidders.
- (11) Instructions to bidders.
- (12) General and detailed plans.
- (13) Notice to proceed.
- (14) Any change orders and agreements that are required to complete the construction of the work in an acceptable manner (including authorized extensions thereof) all of which constitute one (1) instrument.

(Indiana Department of Transportation; 105 IAC 11 -1-10)

**105 IAC 11-1-11 "Contractor" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 11. "Contractor" means the individual, partnership, firm, corporation, or combination of same contracting with or desiring to contract with the department for performance of prescribed work. (Indiana Department of Transportation; 105 IAC 11 -1-11)

**105 IAC 11-1-12 "Date of receipt" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 12. "Date of receipt" means the date the document is file stamped by the prequalification engineer. (Indiana Department of Transportation; 105 IAC 11-1-12)

**105 IAC 11-1-13 "Department" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 13. "Department" means the Indiana department of transportation as constituted under the laws of Indiana for the administration of highway work.

As used in this article, "department" means the Indiana department of transportation acting directly or through its authorized representative. (Indiana Department of Transportation; 105 IAC 11 -1-13)

**105 IAC 11-1-14 "Document" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 14. "Document" includes, without limitation:

- (1) writings;
- (2) drawings;
- (3) graphs;
- (4) charts;
- (5) photographs;
- (6) phono-records; and
- (7) other data compilations;

from which intelligence can be perceived, with or without the use of detection devices. (Indiana Department of Transportation; 105 IAC 11 -1-14)

**105 IAC 11-1-15 "Engineer's estimate" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 15. "Engineer's estimate" means the department's estimated cost to construct the work covered by the contract. (Indiana Department of Transportation; 105 IAC 11 -1-15)

**105 IAC 11-1-16 "Notice to contractors" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 16. "Notice to contractors" refers to the written bulletin distributed by the department inviting bids for work to be performed, listing the type of work, location, qualification requirements, and the cost of the bidding documents. (Indiana Department of Transportation; 105 IAC 11 -1-16)

**105 IAC 11-1-17 "Notice to proceed" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 17. "Notice to proceed" refers to the written notice to the contractor to proceed with the contract work including, when applicable, the date of beginning of contract time. (Indiana Department of Transportation; 105 IAC 11 -1-17)

**105 IAC 11-1-18 "Performance bond" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 18. "Performance bond" means the approved form of security, furnished and executed by the bidder and its surety or sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto and for the payment of all legal debts pertaining to the construction of the project. The performance bond will be in effect after both parties have signed the contract and the contract has been approved by the attorney general of the state of Indiana. (Indiana Department of Transportation; 105 IAC 11-1-18)

**105 IAC 11-1-19 "Plans" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 19. "Plans" includes the approved plans, profiles, typical cross sections, working drawings, and supplemental drawings (or exact reproductions thereof) which show the location, character, dimensions, and details of the work to be done. (Indiana Department of Transportation; 105 IAC 11 -1-19)

**105 IAC 11-1-20 "Prequalification committee" defined**

Authority: IC 8 -23-2-6

Affected: IC 8-23-10

Sec. 20. "Prequalification committee" means the committee appointed by the commissioner to establish the policies and procedures under which a contractor may be qualified. (Indiana Department of Transportation; 105 IAC 11-1-20)

**105 IAC 11-1-21 "Prequalification engineer" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 21. "Prequalification engineer" refers to the administrative officer responsible for the administration of the qualification of contractors. The designation "prequalification engineer" means the prequalification engineer, the prequalification engineer's designee, or alternate. (Indiana Department of Transportation; 105 IAC 11 -1-21)

**105 IAC 11-1-22 "Prequalification files" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 22. "Prequalification files" means the files, singularly and in aggregate, of the prequalification engineer and prequalification committee which contain information relating to the qualification of a contractor. (Indiana Department of Transportation; 105 IAC 11 -1-22)

**105 IAC 11-1-23 "Project" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 23. "Project" means a specific section of the highway where work is to be performed under the contract. (Indiana Department of Transportation; 105 IAC 11 -1-23)

**105 IAC 11-1-24 "Proposal" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 24. "Proposal" means the offer of a bidder, on a prescribed form, to perform the work and to furnish the labor and materials at the prices quoted. (Indiana Department of Transportation; 105 IAC 11 -1-24)

**105 IAC 11-1-25 "Quorum" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 25. "Quorum" means that number of members of the prequalification committee or their designated alternates that constitutes a majority of its voting members. For this purpose, the chairman is not considered a voting member. (Indiana Department of Transportation; 105 IAC 11 -1-25)

**105 IAC 11-1-26 "Special provisions" defined**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 26. "Special provisions" refers to additions and revisions to the standard and supplemental specifications covering conditions peculiar to an individual project. (Indiana Department of Transportation; 105 IAC 11 -1-26)

**105 IAC 11-1-27 "Specifications" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 27. "Specifications" refers to all directions, provisions, and requirements pertaining to performance of the work. (Indiana Department of Transportation; 105 IAC 11 -1-27)

**105 IAC 11-1-28 "Standard specification book" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 28. "Standard specification book" means the published book adopted by the department containing standard specifications and general provisions. (Indiana Department of Transportation; 105 IAC 11 -1-28)

**105 IAC 11-1-29 "Statement" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 29. "Statement" means the form titled "Contractors Statement of Experience and Financial Condition". (Indiana Department of Transportation; 105 IAC 11 -1-29)

**105 IAC 11-1-30 "Subcontractor" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 30. "Subcontractor" means an individual, partnership, firm, corporation, or combination of same to whom the contractor sublets part of the contract. (Indiana Department of Transportation; 105 IAC 11 -1-30)

**105 IAC 11-1-31 "Supplemental specifications" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 31. "Supplemental specifications" refers to additions and revisions to the standard specifications that are adopted subsequent to issuance of the standard specification book. (Indiana Department of Transportation; 105 IAC 11-1-31)

**105 IAC 11-1-32 "Surety" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 32. "Surety" means the corporate body bound with and for the contractor for the full and complete performance of the contract and for the payment of all debts pertaining to the work. When applied to the bid bond, it refers to the corporate body which engages to be responsible for the execution of the contract by the bidder, within the specified time. (Indiana Department of Transportation; 105 IAC 11 -1-32)

**105 IAC 11-1-33 "Unearned work" defined**

Authority: IC 8 -23-2-6  
Affected: IC 8 -23-10

Sec. 33. "Unearned work" means the total dollar value of work contracted for but not performed. The value of items purchased and delivered, but not installed is considered unearned work. For a specific department contract, the value of unearned work shall be based upon the original amount bid, plus the value of items added by approved change orders, minus items deleted by approved change orders, minus the most recent progress estimate submitted by

the department's project engineer/supervisor, minus this person's determination of items performed subsequent to the progress estimate but prior to the point in time for which unearned work is calculated. (Indiana Department of Transportation; 105 IAC 11 -1-33)

## **Rule 2. Requirements for Prequalification of Contractors**

### **105 IAC 11-2-1 General requirements**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 1. (a) A contractor desiring to offer bids for the performance of contracts for the construction or maintenance of highways and bridges and appurtenances thereto must first be prequalified by the department and shall file a verified statement of experience and financial condition using the forms furnished by the department. The statement must include a complete report of the financial ability, adequacy of plant and equipment, organization, and experience of the applicant. The submission of a statement by the applicant is deemed authorization by the applicant for the prequalification committee to obtain all information which is deemed pertinent with respect to the applicant's financial worth, assets and liabilities, organization, personnel, construction experience, prosecution of work on previous contracts, condition and adequacy of equipment, and its attitude toward department regulations and the general public. A new statement is required at least once each year unless specifically requested at more frequent intervals.

(b) The commissioner or prequalification engineer may, at any time during which a certificate of qualification is in effect, demand a new statement. If the contractor does not furnish a new statement within sixty (60) days of the date of the request, the certificate of qualification held by the contractor may be considered forfeited and the contractor may not be permitted to bid on contracts of the department until a new statement has been received and acted upon by the department.

(c) Complete answers to all interrogatories and the furnishing of all information as indicated by column headings, footnotes, or otherwise throughout the statement are an essential part of compliance with this article. Failure to provide complete and true information is grounds for rejection of the application for prequalification and provides grounds for immediate disqualification.

(d) The department will act on an application within thirty (30) days of its receipt. Statements will be considered in the order received as promptly as circumstances permit, except statements from new applicants who desire to bid on projects advertised must be received no later than twenty-one (21) calendar days prior to the bid opening date to receive consideration for that bid opening. A statement from a contractor for prequalification renewal must be received at least fifteen (15) calendar days prior to the bid opening date to receive consideration for that bid opening. A contractor who meets the time frames required by this subsection may submit bids contingent upon the results of its prequalification application.

(e) No bidder shall be given a certificate of qualification unless the review of its statement shows that it possesses net current assets sufficient in the judgment of the commissioner to render it probable that it can satisfactorily execute its contracts and meet its obligations.

(f) An applicant must possess the qualifications prescribed and be determined to be a competent and responsible bidder as verified by the inquiries and investigations of the department to qualify for a certificate of qualification. The areas considered for qualification of the contractor include, but are not limited to, the following:

- (1) Organization.
- (2) Personnel.
- (3) Construction experience.
- (4) Prosecution of work on previous contracts.
- (5) Condition and adequacy of equipment.
- (6) Financial condition and quality of financial information.
- (7) The contractor's attitude toward department rules and the general public.

An applicant will not be considered as competent and responsible if found to be of a character that would otherwise subject it to suspension, revocation, or disqualification.

(g) The prequalification committee shall make a recommendation to the commissioner regarding what action shall be taken. The commissioner may, in the exercise of the commissioner's sole discretion, accept or reject the recommendation of the prequalification committee. The commissioner shall promptly send the contractor written notice of the decision. The certificate of qualification becomes effective after all avenues of appeal under section 9 of this rule are exhausted. Should such decision involve the addition of a classification or the increase of a rating to a certificate of qualification, the certificate of qualification shall become effective on the date the commissioner signs it and shall be in effect during administrative appeal under section 9 of this rule.

(h) For the purpose of determining competency and responsibility, the prequalification committee or the prequalification engineer may send evaluation forms either to those with whom the contractor has had present or previous business relationships or persons and entities who have utilized the past or present services of the contractor's employees. The responses received as a result of such inquiries are to be considered confidential for all purposes including, but not limited to, libel and slander. The responses received shall not be available under any circumstances to the contractor.

(i) No certificate of qualification will be valid for more than twelve (12) months, nor will its expiration date under any circumstance be subsequent to sixteen (16) months after the date of the statement upon which it is based. The certificate period will not be extended. The applicant will be notified if no certificate of qualification is issued.

(j) If, at any time during the valid period of a certificate of qualification, the latest statement on record with the department ceases to fairly and substantially represent the financial position or the construction equipment of the contractor to whom the certificate was issued, it shall be the responsibility of that contractor to so notify the prequalification engineer and to refrain from further bidding on contracts of the department until its qualification has been confirmed or revised. Failure to give such notice will constitute a violation of this article.

(k) A contractor shall not employ any scheme or device to evade this article or the effect of actions taken by the prequalification committee. Action taken by the prequalification committee for an entity controlled by certain owners or officers may be extended to other entities controlled by those same owners or officers, if the prequalification committee determines the extension is necessary to prevent a circumvention of this article.

(l) The department reserves the right to require a personal interview with any contractor when considering qualifications as a part of its investigation procedure. (Indiana Department of Transportation; 105 IAC 11-2-1; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185)

#### **105 IAC 11-2-2 Preparation and filing**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-2; IC 8 -23-10-3

Sec. 2. (a) The contractor must submit the original statement for prequalification to the prequalification engineer. This statement must be complete, clearly legible, and in ink or typed.

(b) If the date of the statement is more than six (6) months old when submitted, the prequalification engineer may request a new statement.

(c) An unaudited statement more than six (6) months old will not be considered for qualification.

(d) The financial statement furnished by an applicant for qualification of more than one million dollars (\$1,000,000) must be prepared and attested as audited by an independent:

(1) certified public accountant registered and in good standing in any state; or

(2) public accountant registered and in good standing in Indiana.

(e) The financial statement furnished by an applicant for qualification of more than two hundred thousand dollars (\$200,000) but not more than one million dollars (\$1,000,000) must be prepared and attested as reviewed by an independent:

(1) certified public accountant registered and in good standing in any state; or

(2) public accountant registered and in good standing in Indiana.

(f) A qualification of two hundred thousand dollars (\$200,000) or less may be granted if the statement furnished by the applicant is certified as correct by an officer of the company.

(g) The accountant shall make an independent verification of assets and liabilities in accordance with generally accepted auditing standards. The accountant's execution of the certificate of audit will constitute certification that an audit in accordance with such standards has actually been performed and reported.

(h) In the event of physical dispersal of construction equipment or of subsequent use or sale of construction materials, the accountant may accept a signed statement of the contractor as evidence of possession of equipment or of materials inventory as of the date of the statement, but this shall not relieve the accountant of the usual responsibilities as to the following:

(1) Title.

(2) Proper and consistent depreciation.

(3) Liens or encumbrances.

(4) Reasonable pricing.

(i) Full and complete information, especially:

(1) the age, date of purchase, and cost when purchased; and

(2) the date if rebuilt;

must be provided for all major items of equipment. The nomenclature used must describe kind, manufacturer, type, capacity, etc., with additional details if necessary. All major items of useful equipment should be listed even though fully depreciated, but no obsolete or useless equipment is to be included.

(j) Contractors controlled by the same owners or officers desiring prequalification must use statements of a common date.

(k) The assets of a contractor shall be identified to support only one (1) prequalification at any time. If contractors controlled by the same owners or officers submit unaudited statements for prequalification, only one (1) of the entities may be prequalified unless the department is able to verify that assets and experience were not duplicated as a mechanism to artificially increase prequalification ratings.

(l) The statement of a corporation must be accompanied by a certified copy of the minutes covering the election of current officers and the current authorization of individuals designated to execute contracts binding the corporation. The current list of individuals authorized to execute contracts binding the corporation may be either a portion of the original articles of incorporation or some subsequent official action of the stockholders or the board of directors. If officers or authorization of individuals designated to execute

contracts binding the corporation are changed in any manner, the contractor shall immediately notify and furnish the prequalification engineer with certified copies of appropriate documents.

(m) The initial statement of a foreign corporation must be accompanied either by valid evidence that it is registered and in good standing with the Indiana secretary of state or by a letter stating that, should it become the successful bidder on a department contract, authorization will be secured within fifteen (15) days after the bid opening. (Indiana Department of Transportation; 105 IAC 11 -2-2; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2187)

#### **105 IAC 11-2-3 Classification and capacity rating**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-2; IC 8 -23-10-4

Sec. 3. (a) A contractor may be classified for one (1) or more types of work and will be rated in accordance with its financial ability, adequacy of plant and equipment, organization, prior experience, record of construction, and other pertinent and material facts which may affect its classification. The contractor will be assigned a classification which will limit the type and quantity of uncompleted work it has under contract at any one (1) time as principal or subcontractor regardless of the location of the work or with whom it is contracted.

(b) A contractor will be assigned an aggregate amount that is to be considered the largest dollar amount of uncompleted work it shall have under contract at any one (1) time, either as principal or subcontractor or both, regardless of its location and with whom it is contracted, with the following exception:

If the aggregate amount is less than three hundred thousand dollars (\$300,000), the aggregate amount is to be considered the largest dollar amount of uncompleted work a contractor shall have under contract at any one (1) time as a principal, regardless of its location and with whom it is contracted. The largest dollar amount of uncompleted work the contractor shall have under contract at any one (1) time, as principal and subcontractor, regardless of its location and with whom it is contracted, shall not exceed three hundred thousand dollars (\$300,000).

(c) The contractor's maximum aggregate rating as determined from the statement will be the sum of the following rating components:

- (1) Net current assets multiplied by ten (10).
- (2) Construction equipment assets (net book value) multiplied by eight (8), but not to exceed one and one -half (1 1/2) times subdivision (1).
- (3) Net fixed and other assets multiplied by two (2), but not to exceed twenty-five percent (25%) of subdivision (1) plus subdivision (2).

(d) Accepted net current assets will be determined from the statement submitted and will be construed as to include only those net current assets which are readily convertible into working capital. Receivables from nongovernmental agencies over one (1) year old will be deducted for prequalification purposes.

(e) Notes due within one (1) year from the financial statement date will be considered a current liability. Notes due after twelve (12) months and within twenty-four (24) months will be considered a fixed liability and deducted from net fixed assets, and the excess, if any, will be deducted from the book value of the equipment. If this is insufficient, the excess will be deducted from the net current assets. Notes due after twenty -four (24) months will not be deducted for prequalification purposes.

(f) If the applicant has guaranteed loans of any person or any entity, or has used assets as security for these loans, or has made other guarantees or commitments of activities of any person or any entity, the department may reduce

or adjust the applicant's net current assets if in the judgment of the department the guaranteed loans, other guarantees or commitments are significant when considered with the applicant's statement.

(g) Notes and accounts receivable from affiliated business firms will not be allowed as assets unless there is attached an audited financial statement showing the debtor has sufficient liquidity to discharge the debt, except an unaudited statement, certified as correct by the debtor, will be accepted if an unaudited statement is submitted for qualification. Notes and accounts receivable from partners of a partnership, or officers and stockholders of a corporation may not be allowed as assets unless there is attached an audited financial statement.

(h) The book value and the market value for stocks and bonds are to be listed. Stocks and bonds will not be considered as working capital unless market value, determined or verified by the accountant, is given. Allowance for stocks and bonds is made for whichever is the lesser of the book or market value except that for stocks or bonds listed on the New York Stock Exchange, American Stock Exchange, or over -the-counter on the National Association of Securities Dealers Automated Quotations (NASDAQ) list, the market value will be used. Stocks of affiliates or subsidiaries which are qualified with the department will not be considered as assets.

(i) The value of useful construction equipment may be the book value listed or may be determined by the application of uniform depreciation schedules. No rating credit will be given for equipment which cannot be satisfactorily identified as to kind, type, and capacity or for which the essential information as to cost and age is not supplied.

(j) "Fixed and other assets" means those assets which have a collateral value but are not readily or normally converted into cash or not directly pertinent to the operation or financing of construction contracts. Construction equipment value in excess of the rating limitation of subsection (c)(2) will be considered as part of fixed assets.

(k) A contractor will first be given a tentative factor of one hundred percent (100%) in its aggregate and respective classified ratings. Each of these tentative factors may be reduced wholly or in part for the contractor's deficiencies in the following areas as determined from a summary of reports from field engineers, other investigations or an interview with the contractor, or both. The areas considered for qualification of the contractor include the following:

- (1) Organization.
- (2) Personnel.
- (3) Construction experience.
- (4) Prosecution of work on previous contracts.
- (5) Quality of workmanship on contracts.
- (6) Condition and adequacy of equipment.
- (7) The contractor's attitude toward department rules, the general public, and equal employment opportunity requirements.

(l) An "unlimited" qualification may be granted if a contractor's maximum aggregate rating exceeds one hundred million dollars (\$100,000,000).

(m) A contractor which has not performed work of any character under the firm name in its application and does not have among its active staff, personnel of approved experience is not entitled to be rated for any work in excess of two hundred thousand dollars (\$200,000). An experience and performance factor reduction of not less than thirty percent (30%) will be made in the case of any organization which has not had previous experience on comparable work. (Indiana Department of Transportation; 105 IAC 11 -2-3)

**105 IAC 11-2-4 Prequalification committee**

Authority: IC 8 -23-2-6

Affected: IC 5 -14-1.5-6; IC 8 -23-10

Sec. 4. (a) There is hereby created a prequalification committee.

(b) The commissioner shall appoint the members of the prequalification committee and designate one (1) of them as chairman. The chairman shall preside at meetings, but the chairman is not entitled to vote unless the vote of the members of the prequalification committee is tied. In event of a tie vote, the chairman shall cast the deciding vote. The prequalification engineer will serve as secretary of the prequalification committee, but the secretary is not entitled to vote. Each member may designate in writing to the secretary, an alternate member.

(c) The prequalification committee shall meet monthly and as called by the chairman. The prequalification committee must have a quorum present in order to transact business. A majority of the votes cast is required to adopt a motion. Abstentions shall not count as votes cast. The secretary is required to take minutes, including date, place, and time of meeting, the names of all present or absent, and to record all motions made and the votes cast thereon. The secretary of the prequalification committee is responsible for the keeping of minutes and for sending and posting annual notices and notices of emergency meetings.

(d) The prequalification committee may meet in executive session to consider matters of initial application for prequalification, renewal, suspension, change of classification or rating, revocation, appeal or other matters pursuant to IC 5 -14-1.5-6(b). During the executive session the prequalification committee is entitled to consider confidential information.

(e) The prequalification committee shall have jurisdiction over all recommendations under this article. The prequalification committee may act either on referrals to the prequalification committee or on its own initiative.

(f) The prequalification committee may investigate, request documents, and interview witnesses and other persons or entities with information deemed relevant.

(g) The prequalification committee may recommend a course of action to the commissioner. The commissioner may accept or reject the recommendation of the prequalification committee. In the event that an initial certificate of qualification is issued, a certificate of qualification issued is reissued, a change is made in a classification or rating of a contractor's certificate of qualification, a contractor's issued certificate of qualification is suspended, or a contractor's issued certificate of qualification is revoked, the commissioner shall notify the contractor in writing. All actions of the commissioner under this article are considered to be effective after all avenues of appeal under section 9 of this rule are exhausted. If the action involves the addition of a classification or the increase of a rating to a certificate of qualification, the certificate will become effective on the date the commissioner signs it and will be in effect during the administrative appeal under section 9 of this rule. (Indiana Department of Transportation; 105 IAC 11-2-4)

**105 IAC 11-2-5 Change in certificate of qualification**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 5. (a) The prequalification committee may recommend to the commissioner a change in the certificate of qualification issued to a contractor based upon the receipt of additional information. Notification of a change in a certificate of qualification will be made in writing and will become effective after all avenues of appeal under section 9 of this rule are exhausted. If the action involves the addition of a classification or the increase of a rating to

a certificate of qualification, the certificate will become effective on the date the commissioner signs it and will be in effect during the administrative appeal under section 9 of this rule.

(b) A request from the contractor for a change in its qualification status must be in writing and received not less than fifteen (15) days prior to the bid opening date. An applicant who has been refused qualification, or who is dissatisfied with the department's decision as to the aggregate amount of uncompleted work to be permitted under contract at any one (1) time, or with any limitation as to the class or classes of work on which the bidder is authorized to bid, may at any time after the expiration of ninety (90) days from the date of the department's previous decision request a change in or file a new application for qualification. (Indiana Department of Transportation; 105 IAC 11 -2-5)

#### **105 IAC 11-2-6 Suspension of certificate of qualification**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-2

Sec. 6. (a) The prequalification committee may recommend to the commissioner the suspension of the contractor's certificate of qualification if the contractor's work is unsatisfactory, if it is apparent the contractor will be unable to complete its contracts on time, or if the contractor has failed to adequately document a current or previous contract.

(b) Notification of the suspension shall be made in writing, and the suspension will become effective after all avenues of appeal under section 9 of this rule are exhausted. The suspension will be lifted when the contractor has taken corrective action to the personal satisfaction of the commissioner. (Indiana Department of Transportation; 105 IAC 11 -2-6)

#### **105 IAC 11-2-7 Withdrawal of certificate of qualification**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-2

Sec. 7. A certificate of qualification may be withdrawn if it has been administratively determined by the prequalification committee that the firm or corporation is no longer active or in existence. Notification of the withdrawal shall be made in writing and will become effective after all avenues of appeal under section 9 of this rule are exhausted. (Indiana Department of Transportation; 105 IAC 11 -2-7)

#### **105 IAC 11-2-8 Revocation of certificate of qualification**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-2; IC 8 -23-10-8

Sec. 8. (a) A certificate of qualification may be revoked if it is administratively determined by the prequalification committee that the contractor or subcontractor has done the following:

- (1) Failed to timely pay, or satisfactorily settle, any bills due to labor and material on former or existing contracts.
- (2) Is found to be in violation of either a state or federal law or regulation or the rules and regulations of a state or federal department, board, bureau, agency, or commission.
- (3) Defaulted on a contract.
- (4) Failed to enter into a department contract.
- (5) Falsified any document required by the department, state board of accounts, or any agency of the state of Indiana. For the purpose of this section, the term "falsify" means an intentional as well as a negligent act of omission or commission.

(6) Was convicted of a bidding crime resulting from a jury or bench trial, entered into a plea of guilty or nolo contendere, made a public admission, made a presentation as an unindicted co-conspirator, or gave testimony, which is protected by a grant of immunity, in any jurisdiction.

(7) Failed to perform any part or portion of an existing or previous contract.

(8) Failed to submit in a timely manner information, documented explanations, and/or evidence required in the contract documents or proposal.

(9) Has been debarred by a federal agency.

(10) Failed to comply with any and all proposal requirements concerning Disadvantaged Business Enterprise (DBE) and Women Business Enterprise (WBE) goals.

(11) Had knowledge that a subcontractor further subcontracted its work.

(12) Offered or gave a gift with a market value of ten dollars (\$10) or more, to a unit, officer, or employee of the department, or repetitively offered or gave gifts of a value of ten dollars (\$10) or less to a unit, officer, or employee of the department.

(b) Notification of such pending action shall be made in writing, setting forth the grounds for the proposed certificate revocation. The revocation will become effective after all avenues of appeal under section 9 of this rule are exhausted. The period of disqualification will not exceed two (2) years. (Indiana Department of Transportation; 105 IAC 11 -2-8)

#### **105 IAC 11-2-9 Appeals procedure**

Authority: IC 8 -23-2-6

Affected: IC 4 -21.5; IC 8 -23-10

Sec. 9. (a) A contractor aggrieved by the decision of the department in regard to the contractor's qualification, suspension, withdrawal, revocation, or change in either classification or rating may make a written request for consideration to the prequalification engineer, with a copy to the commissioner, within fifteen (15) days after receiving such notification.

(b) The contractor may follow the procedure outlined in STEP ONE and STEP TWO or the contractor may elect for a hearing as set forth in STEP TWO. The contractor shall, in its letter, specify which relief it is requesting. If the contractor fails to make an election in its letter, it will be presumed that the contractor has elected to follow and be bound by the procedural steps and cutoff procedures set forth in STEP ONE and STEP TWO, in that order as follows:

STEP ONE: The request must include written justification bearing on its qualification. In addition, the contractor may request a personal interview. The prequalification committee will consider the written request by certified mail or personal service within fifteen (15) days after its receipt. The prequalification committee may request additional information, a personal interview with the contractor, or both. The prequalification committee will make a recommendation to the commissioner who shall notify the contractor in writing of the decision. The decision becomes effective after all avenues of appeal under STEP TWO are exhausted. It will be presumed that in the event the contractor has made no election as to a personal interview that the contractor has elected not to request a personal interview.

STEP TWO: If the contractor is dissatisfied with the STEP ONE decision, the contractor may make a written request by certified mail or personal service within fifteen (15) days of receipt of the STEP ONE decision for an adjudication hearing in accordance with IC 4 -21.5. This request must be sent to the prequalification engineer with a copy to the commissioner.

Upon receipt of the notice, the commissioner will serve the contractor with written notice of the date, place, and time of the hearing and written notice of the appointment of an administrative law judge.

(c) The hearing will be held within thirty (30) days of the receipt of the request, unless otherwise ordered by the administrative law judge.

(d) At the hearing, the contractor will bear the burden of proof when the action of the commissioner is under sections 1 through 2 of this rule. At the hearing, the contractor shall bear the burden of proof when the action of the commissioner is under either section 3 or 5 of this rule, unless the action involves the reduction of an unexpired certificate of qualification. At the hearing, the department shall bear the burden of proof when the action of the commissioner is under either sections 6 through 8 of this rule or section 11 of this rule.

(e) If the contractor fails to follow subsection (b) within the specified time frames, the contractor will be deemed to have accepted the decision of the department as final and deemed to have waived any right to further administrative appeal. (Indiana Department of Transportation; 105 IAC 11-2-9)

#### **105 IAC 11-2-10 Subcontractors**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-4

Sec. 10. (a) It is unlawful for a successful bidder to enter into a subcontract with any other person involving the performance of any part of any work upon which the bidder may be engaged for the department in an amount in excess of one hundred thousand dollars (\$100,000) unless the subcontractor has been properly qualified for the work sublet to it.

(b) The prequalification requirements of this section do not apply to:

- (1) professional services; or
- (2) hauling material or supplies to or from a job site.

(c) All subcontracts must be approved by the department prior to work being performed by the subcontractor.

(d) The department may request disclosure of a subcontractor's board of directors, shareholders, officers, and principal individuals or employees prior to subcontract approval. Failure to disclose such information may result in denial of subcontract approval.

(e) A contractor that is not prequalified may be prohibited from performing subcontract work or limited in the dollar value thereof if the contractor has been found in violation of a rule that would subject a contractor to suspension, revocation, or reduction of its certificate of qualification.

(f) A contractor whose certificate of qualification is revoked or suspended will not be approved to perform work as a subcontractor on a department contract.

(g) A subcontractor that does not have a valid certificate of qualification will be limited to a total of three hundred thousand dollars (\$300,000) in unearned work under contract on any given date with any owner, contractor, or other party. (Indiana Department of Transportation; 105 IAC 11-2-10)

#### **105 IAC 11-2-11 False statements**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-8

Sec. 11. An applicant who is convicted of knowingly making a false statement with respect to the applicant's financial worth in an application for qualification, financial statement, or other written instrument filed by the applicant with the department under this rule is not entitled to submit bids for a period of two (2) years following the date of conviction. (Indiana Department of Transportation; 105 IAC 11 -2-11)

**105 IAC 11-2-12 Gifts**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10-2

Sec. 12. A contractor shall not offer or give a gift, including, but not limited to, money, goods, services, meals, and entertainment, to any unit, officer, or employee of the department if such gift has a fair market value of ten dollars (\$10) or more. Repetitive offering or giving gifts of a value of ten dollars (\$10) or less is also prohibited. "Unit" means any district, division, section, or other group of department employees. Exceptions to this provision must be approved in writing by the department's commissioner. (Indiana Department of Transportation; 105 IAC 11 -2-12; filed Jun 25, 1992, 5:00 p.m.: 15 IR 2452)

### **Rule 3. Requirements for Bidding**

#### **105 IAC 11-3-1 Equal employment opportunity**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 1. A contractor who desires to bid, or perform work on department contracts, must first file an affidavit accepting equal employment opportunity requirements. (Indiana Department of Transportation; 105 IAC 11 -3-1)

#### **105 IAC 11-3-2 Issuance of proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 2. (a) When requested, bidding proposals will be issued to any properly qualified contractor up to 4:30 p.m., Indianapolis time on the last work day immediately preceding the bid opening date unless otherwise indicated in the advertisement. A proposal issued for informational purposes only will be marked "sample proposal" and will not be accepted as a bid from any person.

The prospective bidder, and other persons, will be required to pay the sum stated in the "Notice to Contractors" for bidding material ordered. No refunds will be made for materials ordered and returned except in cases of error in filling orders or when a project advertised is withdrawn prior to the bid opening.

(b) The contractor or bidder purchasing a proposal and plans accepts and assumes the risk that the proposal and plans are complete. Before the submission of a bid, the contractor or bidder shall check the proposal and plans to see that they are complete. The contractor or bidder agrees to waive all claims relating to the completeness of the proposal and plans. If an error is found, the contractor shall notify the prequalification engineer in writing at least ten (10) days before the date the bids are to be opened. (Indiana Department of Transportation; 105 IAC 11 -3-2)

#### **105 IAC 11-3-3 Qualification**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 3. (a) The department's "Notice to Contractors" will list one (1) or more types or classes of work for a contract. A bidder must have bidding capacity equal to or greater than its total bid in the advertised class or combination of classes of work listed in the department's Notice to Contractors for the specific contract.

(b) A contractor not acceptable to the Federal Highway Administration is not eligible for work on a contract involving federal funds. (Indiana Department of Transportation; 105 IAC 11 -3-3)

#### **105 IAC 11-3-4 Bidding capacity**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 4. (a) The bidder's bidding capacity with the department on any given date will be determined by deducting the value of all unearned work as of that date on contracts and subcontracts for work of any owner, contractor, or other party from the aggregate rating and from the appropriate classified ratings which are stated on its certificate of qualification except, if the bidder's aggregate amount is less than three hundred thousand dollars (\$300,000), the bidder's bidding capacity with the department on any given date will be determined as the lesser of the following:

(1) The value of all unearned work as of that date on contracts for work of any owner or other party deducted from the aggregate rating and from the appropriate classified ratings which are stated on the bidder's certificate of qualification.

(2) The value of all unearned work as of that date on contracts and subcontracts for work of any owner, contractor, or other party deducted from three hundred thousand dollars (\$300,000).

(b) The value of work subcontracted on existing contracts of the department to an approved subcontractor will not be considered as unearned work of the bidder in determining the contractor's bidding capacity.

(c) It shall be the responsibility of each qualified bidder to ensure that a bid submitted for a single contract does not exceed its bidding capacity on the date bids are opened. If the bidder does not limit the sum of its regular bids to the volume of work permitted by its bidding capacity, the department may selectively award low bids up to, but not exceeding, the bidder's bidding capacity.

(d) The bidder must show, on the form provided in each proposal, the following:

(1) The amount and type of all unearned work under contract either as principal or subcontractor, based on the latest engineer's or owner's estimate, with proper allowance for work subsequently performed.

(2) The portion of such unearned work on department contracts which is sublet to an approved subcontractor.

(e) The commitment of personnel and equipment on a payroll or rental basis for the performance of definite and specific work must be reported as unearned work even though no formal contract exists. (Indiana Department of Transportation; 105 IAC 11 -3-4; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192)

#### **105 IAC 11-3-5 Joint ventures**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 5. (a) A bid of two (2) or three (3) contractors will be considered a joint venture. No more than three (3) contractors will be permitted as parties to a joint venture. All contractors applying for joint venture approval must be prequalified separately.

(b) A contractor that is a member of a joint venture may not submit a proposal, in its individual capacity or as a participant in another joint venture, for the same contract on which the joint venture bids.

(c) The bidding proposal will be taken out in the name of the joint venture. It shall be signed by each participating contractor, with each contractor fully responsible for the completion of all contract items. The contractors in the joint venture may combine their individual bidding capacities in order to meet the requirements of section 3 of this rule. A contractor in a joint venture shall have bidding capacity for the work the contractor is to perform. The bid items or the percentage of the bid item to be performed by a contractor in the joint venture must be shown in the proposal. The value thereof will be charged to the individual contractor's aggregate and classified bidding capacity.

(d) A request for a joint venture is subject to department approval and must be in writing on the form prescribed by the department. The form must be signed by all parties involved in the joint venture. The form must be notarized by a notary public unrelated to any party to the joint venture, and the form must be received in the office of the prequalification engineer not later than 9:00 a.m. local time the last work day before the bid opening. The prescribed form is available from the prequalification engineer.

(e) The bid and performance bond may be executed by a surety for all parties to the joint venture or a separate bid and performance bond may be executed for each participating contractor. When more than one (1) surety is used, a letter of agreement on the form available from the department must be included with the bid and signed by each surety. (Indiana Department of Transportation; 105 IAC 11 -3-5)

#### **105 IAC 11-3-6 Examination of contract documents and site of work**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec 6. (a) The bidder shall make a careful visual examination of the site of the proposed work and the contract documents before submitting a proposal. The submission of a proposal will be considered conclusive evidence that the bidder has made a careful visual examination of the project site and contract documents.

(b) When an item listed as a pay item is shown on the plans and not in the itemized proposal, and the item is not specifically excluded from payment in the specifications or in the contract documents, the item will be considered an omission in the itemized proposal and payment will be made by the execution of a change order.

(c) Information pertaining to exploration, borings, test pits, and other preliminary investigations may appear on the plans. Soils investigation reports, when available, will be made available for inspection upon request. While the data will have been collected with reasonable care, there is no expressed or implied guarantee that conditions so indicated are entirely representative of those actually existing, or that unanticipated conditions may not exist. These investigations will have been made only for the information of the engineer and to assist in the preparation of the design. The state of Indiana assumes no responsibility for the completeness of the information nor for the actual subsoil or other conditions which may be found to exist during the progress of construction unless otherwise provided in the contract. The bidder shall put its own interpretation on results of the investigations and satisfy itself as to materials to be excavated and soil through which piles may be driven.

(d) If a bidder contemplating the submission of a proposal for a contract is in doubt as to the true meaning of any part of the plans, specifications, or other contract documents, the bidder may submit to the prequalification engineer a written request for an interpretation thereof. The request must be delivered to the prequalification engineer not later than ten (10) days before the advertised date for the opening of bids. Such interpretation will be made by an authorized representative of the department and be sent to all bidders who have purchased or who subsequently purchase the bidding proposal and plans for that project. The department will not be responsible for other interpretations of the contract documents.

(e) With respect to utilities and railroads, the bidder is responsible for what a review of the project site and contract documents would have disclosed. If there are obvious problems with respect to utilities or railroads, the bidder shall make a reasonable inquiry of the utility or railroad before submitting its proposal. (Indiana Department of Transportation; 105 IAC 11 -3-6)

#### **105 IAC 11-3-7 Preparation of proposal**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-9-21; IC 8 -23-10

Sec. 7. (a) All papers bound with or attached to the proposal are considered a part thereof and shall not be detached or altered when the proposal is submitted. The documents designated in the proposal will be considered a part of the proposal whether attached or not.

(b) The quantities appearing in the itemized proposal are approximate and are prepared for the comparison of bids. Payment to the contractor will be made only for the actual quantities of work performed and accepted or for materials furnished in accordance with the contract, unless otherwise provided. The scheduled quantities of work to be done and materials to be furnished may be increased, decreased, or omitted.

(c) The bidder must submit its bid on the proposal purchased from the department or on other authorized documents. The proposal must show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the proposal obtained by adding the several items. All figures must be in ink or typed.

(d) The bidder may submit itemized proposal sheets that have been produced by computer in lieu of the itemized proposal sheets furnished by the department. The computerized itemized proposal sheets shall be formatted as follows:

- (1) The size of the sheets must be eight and one -half (8 1/2) inches by eleven (11) inches.
- (2) The contract number must be shown in the upper right hand corner of each sheet.
- (3) The letting date must be shown on each sheet.
- (4) A revision date must be shown on each sheet if a revision to the itemized proposal has been issued.
- (5) The bidder's printed name must be shown on each sheet.
- (6) The sheet number must be shown on each sheet.
- (7) A line or space must be placed between pay items.
- (8) Item numbers must be placed in numerical order corresponding with those on the supplied itemized proposal sheets.
- (9) Item descriptions, quantities, prices, and units must correspond with those shown on the supplied itemized proposal sheets.
- (10) A unit price must be shown for each item, except the lump sum may be entered in place of the unit price where appropriate.
- (11) A price extension must be shown for each item.
- (12) The total bid amount must be clearly indicated on the last sheet.
- (13) The blank itemized proposal sheets furnished by the department must be included in the proposal book when submitted for letting, and all computerized itemized proposal sheets must be inserted in numerical order in front of the itemized proposal sheets furnished by the department.

(e) If a bidder states an incorrect item description, quantity, price, or unit, then the item description, quantity, price, or unit shown on the department's itemized proposal sheets, will control. The department will correct an incorrect item number if the bidder's intent is clear. The department will compute the bid based on the item numbers shown on the bidder's computerized itemized proposal sheets, and any corresponding item numbers the department corrects, the quantity and units for each item shown on the department's itemized proposal sheets, and the bidder's unit price or lump sum price for each item, regardless of the item description, quantity, or unit shown on the computerized itemized proposal sheets. If the bidder bids on item numbers deleted or not included in the department's itemized proposal sheets the department will disregard the items and adjust the total bid accordingly. In the event the bidder bids on both computerized and department itemized proposal sheets, the department's itemized proposal sheets shall govern. The bidder is responsible for all errors.

(f) A bidder must file a sworn or unsworn statement executed by or on behalf of the person, firm, association, or corporation submitting the bid, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. The required form for the statement will be provided to each prospective bidder.

(g) When an alternate bid is requested, or when an item in the proposal contains a choice to be made by the bidder, the bidder must indicate its choice in accordance with the special provisions or specifications for that particular item, and thereafter no further choice will be permitted.

(h) The bidder's proposal must show the firm name or names and be signed in ink:

- (1) by the individual;
- (2) by one (1) or more members of the partnership;
- (3) by one (1) or more members or officers of each company representing a joint venture;
- (4) by one (1) or more members or officers of a corporation duly authorized to sign contracts; or
- (5) by an agent of the bidder legally qualified and acceptable to the department.

(i) The bidder must properly execute and sign the following:

- (1) The bid bond.
- (2) The performance bond.
- (3) The highway contract form.
- (4) The proposal.
- (5) The noncollusion statement or noncollusion affidavit.
- (6) The current contractual obligations.
- (7) All other forms included in the proposal before submitting same.

All forms must bear the same signature throughout. The contract documents must include authorized signatures and titles in order for the contract documents to be considered properly executed.

(j) An instrument submitted shall not be notarized by:

- (1) a party to the transaction;
- (2) any officer, owner, or stockholder of the company; or
- (3) any relative of the signatory.

(Indiana Department of Transportation; 105 IAC 11 -3-7; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2194)

#### **105 IAC 11-3-8 Bid and performance bonds**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-9

Sec. 8. (a) A bidder must submit a bid bond and a performance bond with its proposal, except as provided in subsection (c). The bonds must be properly executed by a surety company satisfactory to the department and be payable to the state of Indiana.

(b) An Indiana resident agent or a nonresident agent, licensed in Indiana, or an employee of the surety company must execute the bonds. All executed bid and performance bonds must be accompanied by a valid power of attorney letter.

(c) On contracts for roadside mowing, vegetation control, demolition, landscaping, fencing, seeding and sodding, bridge painting, and guardrail installations of one hundred thousand dollars (\$100,000) or less, the bidder may elect not to furnish a performance bond. If the bidder elects not to furnish the performance bond, an amount equivalent to ten percent (10%) of the amounts payable will be deducted and retained by the department until final payment is made.

(d) The bid bond must be in the penal sum of an amount equal to five percent (5%) of the amount bid. The performance bond must be in the penal sum of an amount not less than one hundred percent (100%) of the amount bid.

(e) The department will require a surety company furnishing a bond to a bidder in an amount exceeding the underwriting limitations, as shown by the latest U.S. Department of the Treasury's register, to file the necessary reinsurance agreements with the department, on forms provided by the department, within fifteen (15) days from the date of notification to the contractor of insufficient bond. The reinsurance agreements must be furnished by a surety company acceptable to the department.

(f) Failure to furnish the reinsurance agreements within the stated time will be cause for forfeiture of the bid bond and reduction in the bidder's prequalification. At the discretion of the commissioner, the award of the contract may be made to the next eligible bidder, or the work may be readvertised, or all bids may be rejected and the work not readvertised. (Indiana Department of Transportation; 105 IAC 11 -3-8; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2195)

#### **105 IAC 11-3-9 Combination proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec 9. If the department elects, proposals may be issued for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The commissioner may make awards on combination bids or separate bids to the best advantage of the state. No combination bids, other than those specifically set up in the proposals by the department, will be considered. (Indiana Department of Transportation; 105 IAC 11 -3-9)

#### **105 IAC 11-3-10 Conditional proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec 10. (a) Contracts on which bids are requested will be advertised as "Construction Contracts Group R", "Construction Contracts Group B", "Traffic Contracts Group T", or "Maintenance Contracts Group M". Proposals will be marked "regular" or "conditional", and the bidder shall strike out the word which does not apply, otherwise, the proposal will be considered regular. A bidder may submit either a regular or a conditional proposal on a contract unless otherwise stated in the Notice to Contractors or the special provisions, provided, the bidder submits at least one (1) regular proposal in the same group. The sum of a bidder's regular proposals in all groups and the bidder's uncompleted work on hand must not exceed the bidder's qualification limits.

(b) The bidder may submit a maximum of three (3) conditional proposals in a group, conditional on its failure to be the lowest bidder on its regular proposals in that group. If the bidder submits more than three (3) conditional proposals in a group, the commissioner will reject all conditional proposals of that bidder which apply to that particular group. If all of the bidder's regular proposals in a group are the lowest acceptable bids, then all of its conditional proposals in that group will be null and void.

(c) For each of the regular proposals of a bidder in a group which is not the lowest acceptable bid, the commissioner may select one (1) of the bidder's conditional proposals in that group, and it will then become regular.

The commissioner will select conditional proposals to the best advantage of the state. No bidder will be awarded contracts in a group exceeding the number of its regular proposals submitted in that group. (Indiana Department of Transportation; 105 IAC 11 -3-10)

**105 IAC 11-3-11 Delivery of proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 11. A bidder must submit each proposal in a sealed envelope prior to the time and at the location specified in the advertisement. The blank spaces on the envelope furnished must be filled in correctly to clearly indicate its content. When an envelope other than the one furnished by the department is used, it must be of the same general size and shape and be similarly marked to clearly indicate its contents. Proposals received after the time advertised for opening of bids will be returned to the bidder unopened. (Indiana Department of Transportation; 105 IAC 11 -3-11)

**105 IAC 11-3-12 Withdrawal or revision of proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec 12. A bidder may withdraw or revise a proposal after it has been deposited with the department if the request for withdrawal or revision is received by the department in writing at the location specified in section 11 of this rule prior to the time set for receipt of bids. (Indiana Department of Transportation; 105 IAC 11 -3-12)

**105 IAC 11-3-13 Public opening of proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-9-1; IC 8 -23-10

Sec 13. Proposals will be opened and read publicly on the date and at the time and place advertised or at another public place that the commissioner may designate on the day the bids are to be opened. Bidders, their authorized agents, and other interested parties are invited to be present. (Indiana Department of Transportation; 105 IAC 11 -3-13)

**105 IAC 11-3-14 Consideration of proposals**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-9; IC 8 -23-10

Sec. 14. (a) After the proposals are opened and read, the proposals will be compared on the basis of the summation of the products of the quantities shown in the department's itemized proposal by the unit prices bid.

If no unit price is shown for a pay item, the unit price will be determined by dividing the extension by the quantity shown in the department's itemized proposal. If no extension or unit price is shown for one (1) pay item, the extension will be determined by subtracting the extensions from the contractor's total bid amount, provided that there are no errors in the contractor's extensions. The results of such comparisons will be available to the public. In the event of a discrepancy between unit prices bid and extensions, the unit prices bid will govern.

(b) The award of a contract, if it will be awarded, will be made after the opening of bids to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed in the proposal and this article, provided the sum is not greater than the engineer's estimate. However, the commissioner may award a contract if the bid is not more than five percent (5%) above the engineer's estimate and the commissioner believes that awarding a contract is in the best interests of the state. If the notice to proceed is not dated within sixty (60) days of the opening of bids, the proposal may be withdrawn by the contractor or the award rescinded by the commissioner. However, the proposal may not be withdrawn by the contractor if the notice to proceed is not dated within sixty (60) days of the opening of bids due to any of the following reasons:

- (1) The contractor fails to furnish requested forms or information.
- (2) The contractor has agreed to a delay.

(3) The department is involved in any judicial or administrative action or appeal relating to:

- (A) a minority business enterprise;
- (B) a disadvantaged business enterprise;
- (C) a women's business enterprise goal or program; or
- (D) any other judicial or administrative action arising out of the proposal.

(4) The contractor, either directly or indirectly, causes a delay through its commission or omission.

(5) The proposal states otherwise.

(c) No proposal will be binding on the department until the contract form has been properly executed by the commissioner and approved by the attorney general. The contractor will not be compensated for any costs incurred prior to the notice to proceed. (Indiana Department of Transportation; 105 IAC 11 -3-14; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196)

#### **105 IAC 11-3-14.5 Tax liability**

Authority: IC 8 -23-2-6

Affected: IC 6 -8.1-8-2; IC 8 -23-10-7

Sec. 14.5. (a) Under IC 8 -23-10-7, if the department is notified by the department of state revenue that a bidder is on the most recent tax warrant list, the department may not award a contract to that bidder until:

(1) the bidder provides to the department a statement from the department

of state revenue that the bidder's delinquent tax liability has been satisfied; or

(2) the department receives a notice from the commissioner of the department of state revenue under IC 6 -8.1-8-2(k).

(b) Failure of a bidder to meet the requirements of subsection (a) within seven (7) days after the opening of bids will be considered cause for rejection of the proposal under section 16(c)(1) of this rule. (Indiana Department of Transportation; 105 IAC 11 -3-14.5)

#### **105 IAC 11-3-15 Corporations**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-10

Sec. 15. (a) The department will not enter into a contract or approve a subcontract with any corporation unless the corporation is registered and in good standing to do business in Indiana by the Indiana secretary of state. If the corporation does not have authorization to do business in Indiana at the time its bid is submitted, and if its bid is low and accepted, valid evidence must be furnished within fifteen (15) days after the opening of bids showing that the authorization has been acquired.

(b) Failure to become authorized to do business in Indiana and to submit valid evidence within the stated time will be considered cause for cancellation of the award, forfeiture of the bid bond, and a reduction in the bidder's qualification. At the discretion of the commissioner, the award may be made to the next eligible bidder, or the work may be readvertised, or all bids may be rejected and the work not readvertised. (Indiana Department of Transportation; 105 IAC 11 -3-15)

#### **105 IAC 11-3-16 Rejection of proposals after opening**

Authority: IC 8 -23-2-6

Affected: IC 8 -23-9-2; IC 8 -23-9-13; IC 8 -23-10-1; IC 8 -23-10-6

Sec 16. (a) A proposal opened and read will be subsequently rejected under the following conditions:

- (1) Failure to submit with the bid a properly executed bid bond.
- (2) Failure to submit with the bid a properly executed performance bond.

- (3) Failure to submit a valid power of attorney letter which authorizes the person to bind the surety to the bid bond and the performance bond.
- (4) Failure to submit with the bid a properly executed noncollusion statement or noncollusion affidavit.
- (5) When the bidder does not hold a valid certificate of qualification or when the bidder exceeds its bidding capacity.
- (6) If the department cannot mathematically determine a bidder's unit price or lump sum price for each pay item in the proposal.
- (7) If the department's calculation of the bidder's unit price or lump sum price is zero (0) or a negative amount.
- (8) When no bids received on a contract are less than or equal to five percent (5%) above the engineer's estimate.
- (9) When the bidder adds a provision reserving the right to accept or reject the award.
- (10) If the bidder modifies or alters a provision in the contract documents.
- (11) If the bidder is a trust and fails to disclose the identity of each of the following:
  - (A) Beneficiary of the trust.
  - (B) Settlor empowered to revoke or modify the trust.

(b) The commissioner may reject any and all proposals for cause.

(c) The commissioner reserves the right to reject any and all proposals for any reason, including, but not limited to, any of the following situations, if, in the sole personal judgment and discretion of the commissioner, the rejection is in the best interest of the state:

- (1) When the bidder fails to comply with this article.
- (2) When there exists evidence of collusion among bidders.
- (3) When the bidder has had involvement, in any way, in the design of the project or preparation of the plans or special provisions.
- (4) When a situation has developed which makes it either impossible or not practical to proceed with the proposed work.
- (5) When the bids are above but within five percent (5%) of the engineer's estimate.
- (6) When the proposal is on a form other than the one furnished or authorized by the department for that bidding.
- (7) If the proposal contains obviously unbalanced prices.
- (8) If the bid is not completed either in ink or in type.
- (9) When the highway contract form, proposal form, current contractual obligations, or other forms that appear in the proposal are not properly executed, signed, and notarized where required, subject to subsection (d).
- (10) When the commissioner, in the exercise of the commissioner's sole personal judgment and discretion, determines, subsequent to the opening of bids, facts exist which would disqualify the low bidder or that such low bidder is not competent and responsible.

(d) When the documents in the proposal are omitted or improperly executed or signed, the department may allow the bidder to make the necessary corrections subsequent to the opening. Such corrections, if allowed, must be made within seven (7) calendar days after notification to the bidder of the irregularities. However, this provision does not apply to the situations which appear in subsection (a).

(e) Failure to execute the requested corrections within the seven (7) day period will be cause for the cancellation of the award, forfeiture of the bid bond, and a reduction in the bidder's qualification. In such event, the commissioner, in the exercise of the commissioner's sole personal judgment and discretion, may either award the contract to the next eligible bidder, reject all bids and readvertise for new bids, or reject all bids and not readvertise for new bids. (Indiana Department of Transportation; 105 IAC 11 -3-16; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2197)